

REMARKS

Claims 1, 3, 4, 6, 8-10, 13, and 15-17 are now in the application. By this Amendment, claim 1 has been amended. Support for the amendment to claim 1 is found at least at original claim 7 and at page 2, line 42 to page 3, line 10, of Applicants' disclosure. Claims 7, 11, 12, 14, 18-20, and 22 have been canceled without prejudice or disclaimer. No new matter has been added.

Claims 1, 3, 4, 6, 9-17, 21, and 22 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,990,542 to Motani (hereinafter "Montani '542") and U.S. Patent No. 5,317,033 to Motani (hereinafter "Montani '033") in view of U.S. Patent No. 4,818,451 to Arai et al. or in view of U.S. Patent No. 4,912,140 to Tusim, and in further view of EP 0 915 127 to Glück et al. (hereinafter "EP '127") or in further view of WO 98/51735 to Glück et al. (hereinafter "WO '735").

Claims 7, 8, and 18-20 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Motani '033 or Motani '542 in view of Arai or in view of Tusim, and in further view of EP '127 or in further view of WO '735 and in further view of U.S. Patent No. 4,585,825 to Wesselmann.

Claim 1 is amended to recite wherein the thermoplastic polymer has a bi- or multimodal molecular weight distribution, and the thermoplastic polymer comprises a polymer with a molar mass M_w in the range from 150,000 to 250,000 g/mol and a polymer with a molar mass in the range from 280,000 to 500,000 g/mol. The Office Action asserts, with respect to original claim 7, that Wesselmann can reasonably be considered to suggest features corresponding to "the thermoplastic polymer has a bi- or multimodal molecular weight distribution."

Applicants respectfully submit that Wesselmann suggests, at col. 13, lines 9-14, that styrene is polymerized in a stirred reactor. However, Wesselmann fails to suggest a process for producing foam beads, as claimed, and does not even suggest a foam board extrusion process. As such, a skilled artisan would have no reasonable expectation of success that the weight

distribution suggested in Wesselmann would confer any advantages to the foam board extrusion process of Montani '033 and Montani '542.

Moreover, the proposed modification would render Wesselmann unsuitable for its intended purpose because Wesselmann suggests, at col. 3, lines 3-7, that the polymer resin compositions suggested therein have improved melt flow properties that make them suitable for injection molding compositions. By foaming the compositions of Wesselmann, it would no longer be possible to inject the resin melts into a mold. As set forth in MPEP §2143.01 V, the proposed modification cannot render the prior art unsatisfactory for its intended purpose. Specifically, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Thus, Montani '033 or Montani '542 may not be modified by Wesselmann as proposed in the Office Action and the rejection necessarily fail.

In view of the above amendment, Applicants believe the pending application is in condition for allowance.

Applicants concurrently herewith submit the requisite fee for a Petition for a second-month Extension of Time and a Request for Continued Examination. Applicants believe no additional fee is due with this response. However, if any additional fee is due, please charge our Deposit Account No. 22-0185, under Order No. 12810-00034-US from which the undersigned is authorized to draw.

Dated: March 2, 2009

Respectfully submitted,

Electronic signature: /Georg M. Hasselmann/
Georg M. Hasselmann
Registration No.: 62,324
CONNOLLY BOVE LODGE & HUTZ LLP
1875 Eye Street, NW
Suite 1100
Washington, DC 20006
(202) 331-7111
(202) 293-6229 (Fax)
Attorney for Applicant